

## HOUSE BILL NO. 404

INTRODUCED BY R. KOOPMAN

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING STATUTES RELATED TO COMPENSATION FOR A CERTIFIED TEACHER, SPECIALIST, OR RETIREE OR FOR A NONCERTIFIED SUBSTITUTE TEACHER; PROVIDING THAT A COLLECTIVE BARGAINING AGREEMENT WITH A SCHOOL DISTRICT MAY NOT PROHIBIT AN ACTIVE CERTIFIED TEACHER OR SPECIALIST, A CERTIFIED RETIREE, OR A NONCERTIFIED PERSON FROM WORKING AS A VOLUNTEER FOR ANY POSITION WITHIN THE SCHOOL DISTRICT; PROVIDING A TAX DEDUCTION FOR A VOLUNTEER TEACHER, SPECIALIST, OR RETIREE; AUTHORIZING THE BOARD OF TRUSTEES OF A SCHOOL DISTRICT TO USE ALL OR A PORTION OF THE SALARY OF A CERTIFIED TEACHER, SPECIALIST, SUBSTITUTE TEACHER, OR RETIREE WHO VOLUNTEERS TO WORK WITHOUT COMPENSATION TO PROVIDE TEACHER PAY INCREASES, BONUSES, OR PERFORMANCE INCENTIVES OR TO USE UP TO 50 PERCENT OF THE WAGES FOR OTHER CLASSROOM PURPOSES; AMENDING SECTIONS 15-30-121 AND 39-31-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Volunteer teacher or specialist authorized -- volunteer tax deduction -- salary retained by district.** (1) Pursuant to 39-31-306, the following may volunteer to provide instructional services without compensation for any position with a school district:

(a) a certified active teacher or specialist or a retiree who has maintained certification and who is otherwise qualified under 20-4-104; or

(b) a noncertified person volunteering instructional services as a substitute teacher.

(2) A certified teacher or specialist, a retiree, or a noncertified person who volunteers to provide instructional services to a school district without compensation may, in computing net income, claim a deduction pursuant to 15-30-121.

(3) The trustees of a school district may retain the salary that would have been paid to each teacher, specialist, substitute teacher or specialist, or retiree who, rather than working as an employee of the district, volunteers to provide instructional services to the district without compensation and shall:

(a) transfer all or any portion of the salary that would have been paid to each teacher, specialist, retiree, or noncertified person who volunteers into the district's miscellaneous fund to be used to increase nonvolunteer teacher or specialist salaries or to provide incentive bonuses for nonvolunteer teachers or specialists; or

(b) transfer up to 50% of each salary saved into the district's school flexibility fund established in 20-9-542, with the remainder dedicated to pay nonvolunteer teacher or specialist salaries as specified in subsection (3)(a).

(4) The school district shall provide workers' compensation insurance for each certified teacher, specialist, or retiree, or each noncertified person who volunteers to provide services pursuant to this section.

**Section 2.** Section 15-30-121, MCA, is amended to read:

**"15-30-121. Deductions allowed in computing net income.** (1) In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code, 26 U.S.C. 161 and 211, subject to the following exceptions, which are not deductible:

(i) items provided for in 15-30-123;

(ii) state income tax paid;

(iii) premium payments for medical care as provided in subsection (1)(g)(i);

(iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii); and

(v) a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in 33-20-701;

(b) federal income tax paid within the tax year, not to exceed \$5,000 for each taxpayer filing singly, head of household, or married filing separately or \$10,000 if married and filing jointly;

(c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:

(i) expenses for household and dependent care services necessary for gainful employment incurred for:

(A) a dependent under 15 years of age for whom an exemption can be claimed;

(B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income

do not apply, who is unable to provide self-care because of physical or mental illness; and

(C) a spouse who is unable to provide self-care because of physical or mental illness;

(ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(A) household services that are attributable to the care of the qualifying individual; and

(B) care of an individual who qualifies under subsection (1)(c)(i);

(iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:

(A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed \$4,800;

(B) expenses for services in the household are deductible under subsection (1)(c)(i) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:

(I) \$2,400 in the case of one qualifying individual;

(II) \$3,600 in the case of two qualifying individuals; and

(III) \$4,800 in the case of three or more qualifying individuals;

(v) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over \$18,000;

(vi) for purposes of this subsection (1)(c):

(A) married couples shall file a joint return or file separately on the same form;

(B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

(I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

(C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code of 1954 (now repealed) that were in effect for the tax year that ended December 31, 1978;

(e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to the conditions set forth in 15-30-156;

(g) the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:

(i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and

(ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:

(A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or

(B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996;

(h) light vehicle registration fees, as provided for in 61-3-560 through 61-3-562, paid during the tax year; and

(i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201; and

(j) the greater of:

(A) the current annual salary of a certified teacher or specialist position replaced by a volunteer pursuant to [section 1];

1 (B) the annual salary of a volunteer's last position in the school district; or

2 (C) the salary of a position filled by a volunteer as determined by a school district's pay schedule for the  
3 district in which the volunteer is volunteering pursuant to [section 1].

4 (2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home  
5 or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child  
6 and at least one unrelated child in the ordinary course of business may deduct employment-related expenses  
7 considered to have been paid for the care of the child.

8 (b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal  
9 to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours  
10 of care. The employment-related expenses apply regardless of whether any expenses actually have been paid.  
11 Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

12 (c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the  
13 deduction under this subsection (2)."

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15 **Section 3.** Section 39-31-306, MCA, is amended to read:

16 **"39-31-306. Collective bargaining agreements.** (1) An agreement reached by the public employer  
17 and the exclusive representative must be reduced to writing and must be executed by both parties.

18 (2) Except as provided in subsection (5), an agreement may contain a grievance procedure culminating  
19 in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

20 (3) An agreement between the public employer and a labor organization must be valid and enforced  
21 under its terms when entered into in accordance with the provisions of this chapter and signed by the chief  
22 executive officer of the state or political subdivision or commissioner of higher education or by a representative.  
23 A publication of the agreement is not required to make it effective.

24 (4) The procedure for the making of an agreement between the state or political subdivision and a labor  
25 organization provided by this chapter is the exclusive method of making a valid agreement for public employees  
26 represented by a labor organization.

27 (5) An agreement to which a school is a party:

28 (a) must contain a grievance procedure culminating in final and binding arbitration of unresolved and  
29 disputed interpretations of agreements. The aggrieved party may have the grievance or disputed interpretation  
30 of the agreement resolved either by final and binding arbitration or by any other available legal method and

forum, but not by both. After a grievance has been submitted to arbitration, the grievant and the exclusive representative waive any right to pursue against the school an action or complaint that seeks the same remedy. If a grievant or the exclusive representative files a complaint or other action against the school, arbitration seeking the same remedy may not be filed or pursued under this section.

(b) may not contain a provision prohibiting:

(i) a teacher or specialist, certified under 20-4-106, or a retiree who has maintained certification from contributing services as a volunteer for any position within the school district for which the person is otherwise qualified under 20-4-104; or

(ii) a noncertified person from contributing services as a volunteer substitute teacher for any position within the school district."

**NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 4, part 2, and the provisions of Title 20, chapter 4, part 2, apply to [section 1].

**NEW SECTION. Section 5. Effective date -- applicability.** [This act] is effective on passage and approval and applies to collective bargaining agreements entered into on or after [the effective date of this act].

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